

Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

MARK LANE, individually, Plaintiff, vs. THE KROGER CO., a foreign corporation, registered and doing business in Washington as FRED MEYER STORE #25; and FRED MEYER STORES, INC., a foreign corporation, registered and doing business in Washington as FRED MEYER STORE #25; Defendants.	NO. 2:18-cv-00483 STIPULATED PROTECTIVE ORDER
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1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public

disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

(a) Documents containing non-public and/or private personal information of non-parties such as employees and former employees of a party, including personnel files, documents containing financial or medical information, investigation files, disciplinary records, performance evaluations, payroll records, and other personnel-related documents that are treated as confidential by a party;

(b) accounting information or tax records;

(c) income statements, balance sheets, or documents that otherwise describe, contain or disclose internal company information; and

(d) Documents that describe, contain, or disclose internal or non-public corporate information; including proprietary information, trade secrets (as defined in the Washington Uniform Trade Secrets Act, RCW 19.108.010(4)), sales data, sales projections, budgets, customer lists, business plans, and any other documents that are treated as confidential by the designating party.

Plaintiff's medical records will be considered confidential without further designation.

3. SCOPE

1 The protections conferred by this agreement cover not only confidential
2 material (as defined above), but also (1) any information copied or extracted from
3 confidential material; (2) all copies, excerpts, summaries, or compilations of
4 confidential material; and (3) any testimony, conversations, or presentations by
5 parties or their counsel that might reveal confidential material.

6 However, the protections conferred by this agreement do not cover
7 information that is in the public domain or becomes part of the public domain
8 through trial or otherwise.

9 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

10 4.1 Basic Principles. A receiving party may use confidential material that
11 is disclosed or produced by another party or by a non-party in connection with this
12 case only for prosecuting, defending, or attempting to settle this litigation.
13 Confidential material may be disclosed only to the categories of persons and under
14 the conditions described in this agreement. Confidential material must be stored
15 and maintained by a receiving party at a location and in a secure manner that
16 ensures that access is limited to the persons authorized under this agreement.

17 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the designating party, a
19 receiving party may disclose any confidential material only to:

20 (a) the receiving party's counsel of record in this action, as well
21 as employees of counsel to whom it is reasonably necessary to disclose the
22 information for this litigation;

1 (b) the officers, directors, and employees (including in house
2 counsel) of the receiving party to whom disclosure is reasonably necessary for this
3 litigation, unless the parties agree that a particular document or material produced
4 is for Attorney's Eyes Only and is so designated;

5 (c) experts and consultants to whom disclosure is reasonably
6 necessary for this litigation and who have signed the "Acknowledgment and
7 Agreement to Be Bound" (Exhibit A);

8 (d) the court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the
10 duplication of confidential material, provided that counsel for the party retaining the
11 copy or imaging service instructs the service not to disclose any confidential
12 material to third parties and to immediately return all originals and copies of any
13 confidential material;

14 (f) during their depositions, witnesses in the action to whom
15 disclosure is reasonably necessary and who have signed the "Acknowledgment
16 and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
17 designating party or ordered by the court. Pages of transcribed deposition
18 testimony or exhibits to depositions that reveal confidential material must be
19 separately bound by the court reporter and may not be disclosed to anyone except
20 as permitted under this agreement;

21 (g) the author or recipient of a document containing the
22 information or a custodian or other person who otherwise possessed or knew the
information.

1 4.3 Filing Confidential Material. Before filing confidential material or
2 discussing or referencing such material in court filings, the filing party shall confer
3 with the designating party to determine whether the designating party will remove
4 the confidential designation, whether the document can be redacted, or whether a
5 motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g)
6 sets forth the procedures that must be followed and the standards that will be
7 applied when a party seeks permission from the court to file material under seal.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.
10 Each party or non-party that designates information or items for protection under
11 this agreement must take care to limit any such designation to specific material
12 that qualifies under the appropriate standards. The designating party must
13 designate for protection only those parts of material, documents, items, or oral or
14 written communications that qualify, so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are not
16 swept unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified or that have been made for
19 an improper purpose (e.g., to unnecessarily encumber or delay the case
20 development process or to impose unnecessary expenses and burdens on other
21 parties) expose the designating party to sanctions.
22

1 If it comes to a designating party's attention that information or items that it
2 designated for protection do not qualify for protection, the designating party must
3 promptly notify all other parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided
5 in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
6 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
7 protection under this agreement must be clearly so designated before or when the
8 material is disclosed or produced.

9 (a) Information in documentary form: (*e.g.*, paper or electronic
10 documents and deposition exhibits, but excluding transcripts of depositions or
11 other pretrial or trial proceedings), the designating party must affix the word
12 "CONFIDENTIAL" to each page that contains confidential material. If only a portion
13 or portions of the material on a page qualifies for protection, the producing party
14 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
15 markings in the margins).

16 (b) Testimony given in deposition or in other pretrial proceedings:
17 the parties and any participating non-parties must identify on the record, during the
18 deposition or other pretrial proceeding, all protected testimony, without prejudice
19 to their right to so designate other testimony after reviewing the transcript. Any
20 party or non-party may, within fifteen days after receiving the transcript of the
21 deposition or other pretrial proceeding, designate portions of the transcript, or
22 exhibits thereto, as confidential. If a party or non-party desire to protect

1 confidential information at trial, the issue should be addressed during the pre-trial
2 conference.

3 (c) Other tangible items: the producing party must affix in a
4 prominent place on the exterior of the container or containers in which the
5 information or item is stored the word "CONFIDENTIAL." If only a portion or
6 portions of the information or item warrant protection, the producing party, to the
7 extent practicable, shall identify the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the designating party's right to secure protection under this agreement for such
11 material. Upon timely correction of a designation, the receiving party must make
12 reasonable efforts to ensure that the material is treated in accordance with the
13 provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a
16 designation of confidentiality at any time. Unless a prompt challenge to a
17 designating party's confidentiality designation is necessary to avoid foreseeable,
18 substantial unfairness, unnecessary economic burdens, or a significant disruption
19 or delay of the litigation, a party does not waive its right to challenge a
20 confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.

22 6.2 Meet and Confer. The parties must make every attempt to resolve
any dispute regarding confidential designations without court involvement. Any

1 motion regarding confidential designations or for a protective order must include a
2 certification, in the motion or in a declaration or affidavit, that the movant has
3 engaged in a good faith meet and confer conference with other affected parties in
4 an effort to resolve the dispute without court action. The certification must list the
5 date, manner, and participants to the conference. A good faith effort to confer
6 requires a face-to-face meeting or a telephone conference.

7 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
8 court intervention, the designating party may file and serve a motion to retain
9 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
10 5(g), if applicable). The burden of persuasion in any such motion shall be on the
11 designating party. Frivolous challenges, and those made for an improper purpose
12 (e.g., to harass or impose unnecessary expenses and burdens on other parties)
13 may expose the challenging party to sanctions. All parties shall continue to
14 maintain the material in question as confidential until the court rules on the
15 challenge.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION

18 If a party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this action as
20 "CONFIDENTIAL," that party must:

21 (a) promptly notify the designating party in writing and include a
22 copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena
2 or order to issue in the other litigation that some or all of the material covered by
3 the subpoena or order is subject to this agreement. Such notification shall include
4 a copy of this agreement; and

5 (c) cooperate with respect to all reasonable procedures sought to
6 be pursued by the designating party whose confidential material may be affected.

7 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a receiving party learns that, by inadvertence or otherwise, it has
9 disclosed confidential material to any person or in any circumstance not authorized
10 under this agreement, the receiving party must immediately (a) notify in writing the
11 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
12 all unauthorized copies of the protected material, (c) inform the person or persons
13 to whom unauthorized disclosures were made of all the terms of this agreement,
14 and (d) request that such person or persons execute the "Acknowledgment and
Agreement to Be Bound" that is attached hereto as Exhibit A.

15 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

17 When a producing party gives notice to receiving parties that certain
18 inadvertently produced material is subject to a claim of privilege or other protection,
19 the obligations of the receiving parties are those set forth in Federal Rule of Civil
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
21 procedure may be established in an e-discovery order or agreement that provides
22

1 for production without prior privilege review. The parties agree to the entry of a
2 non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

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4 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

5 Within 60 days after the termination of this action, including all appeals,
6 each receiving party must return all confidential material to the producing party,
7 including all copies, extracts and summaries thereof. Alternatively, the parties may
8 agree upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival
10 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
11 correspondence, deposition and trial exhibits, expert reports, attorney work
12 product, and consultant and expert work product, even if such materials contain
13 confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in
15 effect until a designating party agrees otherwise in writing or a court orders
16 otherwise.
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: _____ Date: _____

COPPINGER CARTER P.S.

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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: October 31, 2018.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Lane vs. The Kroger Co., a Foreign Corporation, Registered and Doing Business in Washington as Fred Meyer Store #25; and Fred Meyers Stores, Inc., a Foreign Corporation, Registered and Doing Business in Washington as Fred Meyer Store #25*, case number 2:18-cv-00483. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____